S.B.Civil Revision Petition No.35/06.
Inamul Haque v. Shivraj & ors.

Date of Order: 01.9.2006.

HON'BLE MR. PRAKASH TATIA, J.

Mr. Rajiv Purohit for the petitioner.
Mr. R.R.Nagori for the respondent.

This revision is required to be disposed of in view of the fact that the plaintiff filed the suit for eviction of his tenant before the trial court on 2.1.1972. The ground for eviction of tenant was that the plaintiff's son, who was student in the year 1972, left the studies and wants to do the business. The suit of the plaintiff was dismissed as abated vide order dated 7.8.1975, because of the reason that during the pendency of the suit, the plaintiff died. Though the application for bringing on record the legal representatives of the plaintiff was submitted but in that application, all the legal representatives were not included. The said order dated 7.8.1975 was challenged by preferring appeal before the first appellate court. The first appellate court vide order dated 4.10.1983, dismissed the appeal, therefore, one of the legal representatives of the plaintiff preferred the second appeal. It appears that during pendency of the second appeal, two of the respondents died. The appellant's appeal was converted into revision petition because of the reason that order under challenge before the first appellate court was the order of abatement of the suit and, therefore, the regular second appeal was not maintainable. The matter came up

for hearing in the year 2006.

As stated earlier, the plaintiff's suit for eviction of the tenant on the ground of need of the one of the plaintiff's son Inamul Haque who left the studies in the year 1972 for doing business was dismissed. It is difficult to accept that need of the plaintiff which might have been in existence in the year 1972, can survive for more than 32 years. If both the orders under challenge are set aside and the suit is remanded to the trial court, no useful purpose will be served because of subsequent development and that development is passing of more than 34 years. Therefore, in case, there is need of the plaintiff for the suit premises in the year 2006 or it was in existence before 2006, then he can file another suit as that suit will not be barred because of the accrual of cause of action subsequently. It will be relevant to mention here that during the pendency of this revision petition, the Code of Civil Procedure has been amended narrowing the scope of the revision petition.

In view of the above, I do not find any reason to interfere while exercising jurisdiction under Section 115, C.P.C. to set aside to two years passed by the court below.

In view of the above, the revision petition is disposed of.

(**PRAKASH TATIA),J.**

mlt.